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Intellectual Property Department
Dura Automotive Systems, Inc.
2791 Research Drive
Rochester Hills, MI 48309

In re Application of
Ronnie G. Gipson
Application No. 10/045,223
Filed: November 9, 2001
For: ARTICULATED WINDOW PANEL WITH
HIDDEN HINGE FOR VEHICLES

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is a decision on applicant's renewed petition, and supplement to the renewed petition, filed in the United States Patent and Trademark Office on February 23, 2004 and October 6, 2004, respectively.

The petition is **DISMISSED**.

A review of the file record shows that an Office Action was mailed to applicant on February 14, 2003, wherein a three-month shortened statutory period for response was set. Since no timely response to the February 14, 2003 Office Action was received and the six-month statutory time period for reply expired, the application became abandoned and a notice to that effect was mailed on September 24, 2003.

Petitioner states that a response was filed on April 4, 2003 by facsimile transmission. In support thereof, petitioner has provided, *inter alia*, 1) a copy of a response to the February 14, 2003 Office action, including a transmittal cover letter, 2) a copy of a Certificate of Transmission, on a separate page signed by Jennifer Sinkovich and dated April 4, 2003, 3) a verified statement under 37 CFR 1.8(b)(3) by Jennifer Sinkovich, and 4) a copy of a portion of Dura Automotive Systems' telephone charge records.

Petitioner's evidence of a timely filing, based on a Certificate of Transmission, is considered to be insufficient to withdraw the holding of abandonment. In this regard, any petition to withdraw the holding of abandonment based upon a Certificate of Transmission by facsimile must include the following requirements:

- (1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and

(2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the *original* response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512).

Further, MPEP § 512 very specifically requires that,

"(C) When the certification is presented on a separate sheet, that sheet must (1) be signed and (2) fully identify and be securely attached to the paper it accompanies. The required identification should include the application number and filing date of the application as well as the type of paper being filed, e.g., reply to rejection or refusal, Notice of Appeal, etc..."

Moreover, without the proper identifying data, a certification presented on a separate sheet will not be considered acceptable if there is any question or doubt concerning the connection between the sheet and the paper filed" (emphasis added).

The copy of the Certificate of Transmission submitted by petitioner is on a separate sheet and does not identify, in any way, the paper that it accompanied, and cannot be considered acceptable proof of a timely filing. In an effort to overcome this deficiency, petitioner has also submitted a copy of Dura Automotive's telephone charge records. However, the copy of Dura Automotive's telephone charge records does not overcome the above-noted, very specific requirement necessary to show a timely filing based on a Certificate of Transmission, when petitioning for the withdrawal of the holding of abandonment.

For these reasons, applicant's renewed petition to withdraw the holding of abandonment is **DISMISSED**.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(l); and (3) an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$500. The fee for a petition under the unintentional standard is \$1,500. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive.

The required items should be promptly submitted under a cover letter entitled "Petition to Revive".

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries regarding petitions to revive should be directed to the Office of Petitions Staff at (571) 272-3282.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."



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RAR/rwg: 10/18/05